

(2016) 03 KL CK 0019

In the High Court Of Kerala

Case No : W.A. No. 1418 of 2015 in WP(C) No. 16338/2011 and Cont. Case (C) No. 1536 of 2010

Union of India and Others

APPELLANT

Vs

V. Parameswaran and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Food Corporations Act, 1964 — Section 12A, Section 12A (4C), Section 12A(4), Section 12A(4)(a), Section 12A(4)(b), Section 12A(4-C)

Citation : (2016) 2 KLT 12 : (2016) LIC 1785

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : N. Nagaresh, A.S.G., for the Appellant; Pauly Mathew Muricken and Jacob Sebastian, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok Bhushan, C.J.

1. The writ appeal has been filed by the Union of India and other respondents who were respondents 1 to 5 in W.P.(C) No. 16338/2011 filed by Sri V. Parameswaran, the 1st respondent in the writ appeal. The Cont. Case (C) No. 1536/2010 has been filed by another applicant viz., Sri K. Gopalan complaining disobedience of the judgment and order of the learned Single Judge dated 14.3.2000 in O.P. No. 1642/1996 (V.K. Subramanian and others v. Government of India and others). The applicant was the 5th petitioner therein.

2. The writ petitioner V. Parameswaran relied on the judgment of the learned Single Judge dated 14.3.2000 in O.P. No. 1642/1996. Hence, both the writ appeal and the contempt case are heard together and are being decided by this common judgment.

W.A. No. 1418/2015

3. The parties are referred as described in the writ petition.

4. The writ petitioner was an erstwhile employee of the Government of India, Ministry of Food under the Regional Director, Southern Region, Madras appointed on 3.7.1958. On formation of Food Corporation of India (FCI), the petitioner and certain other employees were transferred to FCI in the year 1977. Under Section 12A, sub-section (4) of the Food Corporations Act, 1964, those employees who were transferred from Government employment to the FCI were required to exercise option within six months regarding (i) pay scale under the Central Government immediately before the date of transfer or (ii) the pay scale applicable to the post under the Corporation and further regarding the leave, provident fund, retirement and other terminal benefits whether those admissible to the employees of the Central Government or in accordance with the benefits admissible to the employees of the Corporation. Petitioner exercised his option dated 18.4.1977 opting for - "(a) by the scale of pay applicable to the post under the Corporation to which he was transferred, and (b) by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the Rules and orders of the Central Government as amended from time to time.

5. In view of the option exercised by the petitioner, he was paid the pay scale applicable to the employees of the Corporation. In the Corporation, IDA (Industrial Dearness Allowance) pattern pay scale was introduced w.e.f. 1.8.1983. After enforcement of the IDA pay scale, option was given to the employees of the Corporation and the petitioner opted for IDA pay scale and drawn the IDA pay scale w.e.f. 1.8.1983. The first IDA wage revision to IDA pattern pay scale was implemented w.e.f. 1.8.1983 and the second and third IDA wage revision was implemented w.e.f. 1.8.1987 and 1.1.1992.

6. It has to be noted that employees of the FCI prior to the introduction of CDA (Central Dearness Allowance) pay scale, were taking the benefit of CDA pay band. The petitioner attained the age of superannuation w.e.f. 1.2.1993. His pension was fixed and pensionary benefits were calculated on the basis of IDA pay scale, last drawn by him as per his option under sub-sections (4)(a), (4)(b) and (4C) of Section 12A. On account of grant of selection grade, petitioner's pension was again revised w.e.f. 1.2.1993. Petitioner and other employees who were transferred to the Corporation from the Central Government, Department of Food and Supplies, were also extended the benefits of Central Dearness Relief (CDR). Certain objections were raised by the Audit Department that transferred employees of the Central Government who were absorbed in the FCI were not entitled to CDR and the said amount was wrongly paid to the retirees of FCI. Orders were issued by the Government of India directing for adjustment/recovery of the excess payment.

7. Large number of retirees, who were issued notice for recovery, filed O.P. No. 1642/1996 (V.K. Subramanian and others v. Government of India and others) and other original petitions in the High Court where such original petitioners challenged the orders directing recovery. The O.P. No. 1642/1996 along with a

bunch of original petitions were allowed by the learned Single Judge vide judgment dated 14.3.2000 setting aside the orders of the Government directing recovery. The learned Single Judge also held that the employees of the FCI having opted for terminal benefits admissible to Central Government are clearly entitled for CDR. The original petition was disposed of directing the respondents to extend all the retiral benefits as admissible to the Central Government employees. Against the judgment of the learned Single Judge dated 14.3.2000, several writ appeals have been filed, which writ appeals came to be dismissed on 1.10.2002. Petitioner V. Parameswaran also filed O.P. No. 21954/1999 which also came to be heard along with writ appeals filed against the judgment of the learned Single Judge dated 14.3.2000. The writ appeals against the judgment dated 14.3.2000 were dismissed by judgment dated 1.10.2002 and by the same judgment of the Division Bench, O.P. No. 21945/1999 filed by the petitioner was allowed. Against the Division Bench judgment dated 1.10.2002, the Union of India filed special leave petitions which were converted to Civil Appeal Nos. 238 to 244 of 2004.

8. All the civil appeals were dismissed by the judgment of the Apex Court dated 10.2.2010. After the Apex Court judgment, Ext. P9 order was issued by the Government of India dated 16.5.2011 directing payment of CDR to all employees of the FCI, who had opted for central retiral benefits, at the pattern of the Central Government employees. By Ext. P10, the CDR to be paid on the pension of the petitioner V. Parameswaran was revised as per Supreme Court order, w.e.f. 1.2.1993 onwards. The petitioner V. Parameswaran filed the writ petition contending that he has been treated as IDA pensioner in the impugned orders which is clear violation of the orders of the High Court and the Supreme Court. It was pleaded that petitioner at that time was drawing a pension of Rs. 17,419/- and if Ext. P10 order is implemented, his monthly pension be only Rs. 15,670/-. It was further stated that the 5th and 6th Central Pay Commission benefits already granted to the petitioner shall also be reduced by the implementation of Ext. P10. The petitioner filed W.P.(C) No. 16338/2011 praying for following reliefs:--

"i) Issue a writ of certiorari or any other appropriate writ order or direction calling for the records leading to Exts. P9 and P10 and quash them.

ii) Issue a writ of certiorari or any other appropriate writ, order or direction commanding the respondents to pay the pensionary benefits to the petitioner on the basis of the basic pay fixed as per Ext. P4 with effect from 01.02.1993 in accordance with provisions contained in central Civil Services (Pension) Rules.

iii) Declare that the petitioner is entitled to get the Central Dearness Relief, Interim Relief and the 6th pay Commission report and other benefits given to Central Government employees in accordance with the provisions contained in Central Civil Services (Pension) Rules by the issuance of writ of mandamus or other appropriate writ, order or direction.

iv) Issue a writ of certiorari or any other appropriate writ, order or direction commanding the respondents not to recovery any amount from the petitioner and disburse the differential commuted value of pension and gratuity and also to disburse the arrears of pension due to the petitioner based on the basis pension fixed under Exts. P4 by fixing the total pension as if he retired from service as Central Government Employees."

9. A counter affidavit has been filed on behalf of respondents 1, 2, 4 & 5 stating that petitioner as per option exercised under Section 12A sub-sections (4)(a) & (4)(b) is entitled for payment of pension in accordance with the Central Civil Services (Pension) Rules, 1972 [CCS(P) Rules], applicable to the Central Government employees. The petitioner's last drawn salary being in the IDA pay scale, he is entitled to the computation of pension on the said last drawn pay and the petitioner was also entitled to CDR. It was, however, pleaded that the petitioner had accepted the IDA wage revision sanctioned w.e.f. 1.8.1983, 1.8.1987 and 1.1.1992, and was not entitled for the benefits of 4th, 5th, and 6th central pay Commission report. Petitioner and thousands of FCI employees had opted for IDA pay scale which was much higher than the then CDA pay scales receiving at the time by the Corporation employees. The benefit of IDA revision was given to the employees every five years whereas, Central Government employees were entitled for pay revision once in ten years only. Petitioner looking to the higher pay band, IDA pay scale being more beneficial, had opted for IDA pay band w.e.f. 1.8.1983 in which pay band, he received the salary till his age of retirement. Hence, the pensionary benefits have to be calculated according to the IDA pay scale drawn by the petitioner which is the last drawn salary by him. In view of judgment of the High Court and Apex Court, CDR on pension has already been extended to the petitioner and other employees. The decision of the Ministry not to pay CDR was quashed and the petitioner was allowed to receive CDR. The orders Exts. P9 and P10 were sought to be justified.

10. The learned Single Judge heard the writ petition and by its judgment dated 5.2.2015 had allowed the writ petition holding that petitioner cannot be treated as IDA pensioner and in view of the earlier judgment of this Court dated 14.3.2000 in O.P. No. 1642/1996 which was confirmed by the Division Bench as well as the orders passed by the Division Bench in O.P. No. 21954/1999 filed by the petitioner, the respondents were liable to extend all retiral benefits which are admissible to Central Government employees, including the benefits of Central Pay Commission Revision, Central Dearness and other benefits. The learned Single Judge allowed the writ petition holding that respondents were bound to work out the terminal benefits and pension strictly treating the petitioner as CDA pensioner and to fix all such benefits in the same manner as it is fixed in the case of a pensioner from Central Government Service. It was held that the right to get treated as CDA pensioner has flown from earlier judgment of the learned Single Judge dated 14.3.2000 and Division Bench judgment dated 1.10.2002. The learned Single Judge granted a month's time for fixing and disbursing the said benefits. Cont. Case No. 1536/2010, which was heard along with the writ

petition, was deferred. Aggrieved by the judgment of the learned Single Judge dated 5.2.2015, W.A. No. 1418/2015 has been filed.

Cont. Case (C) No. 1536/2010

11. The applicant K. Gopalan was initially appointed as a Tally Clerk in the Central Storage Depot under the Food Department of the Government of India. He was subsequently transferred to the FCI. The applicant gave his option adopting the pay scale of FCI and retiral benefits as per the Central Government employees. The applicant has also adopted the IDA pay scale w.e.f. 1.8.1983. The applicant retired on 30.11.1993 as Assistant Manager, District Office, Thiruvananthapuram. The Central Dearness Relief instead of Industrial Dearness Relief was sanctioned to the applicant. Orders were issued for recovering the CDR sanctioned to the applicant and another employees, challenging which the O.P. No. 1642/1996 was filed by the applicant which was allowed by the learned Single Judge on 14.3.2000. Writ appeal filed by the Union of India against the judgment was dismissed on 1.10.2002. Union of India also filed a special leave petition in the Supreme Court, which too was dismissed on 10.2.2010 in Civil Appeal Nos. 238 to 244/2004. After dismissal of the appeals by the Supreme Court, order was issued by the Government of India on 24.9.2010 (Annexure-F to the contempt case) wherein it was directed that CDR be released to the applicant and other similarly situated persons who retired on IDA pay scales. Alleging that the order dated 24.9.2010 issued by the Government of India is clear disobedience of the directions of the High Court as well as Supreme Court, the contempt application was filed. It is further stated that inspite of the orders, the applicant has not received the benefits and the respondents are keeping in abeyance the judgments and other directions issued in that regard.

12. In the contempt case, affidavit was filed by the 4th respondent stating that respondents have fully complied with the judgment of the High Court in O.P. No. 1642/1996. Copy of the letter dated 20.12.2010 issued by the Senior Accounts Officer, Chennai to the Central Pension Accounting Officer and letter dated 8.1.2002 were annexed. As per the orders passed by the Court, the pension was revised.

13. We have heard Sri N. Nagaresh, the learned Assistant Solicitor General appearing for the Union of India and Sri N.N. Sugunapalan, the learned Senior Counsel appearing for the petitioner as well as the applicant.

14. Sri N. Nagaresh in support of the writ appeal contends that the judgments of the High Court in O.P. No. 1642/1996 as well as in O.P. No. 21954/1999 have been fully complied with. He submitted that the issue raised before the learned Single Judge, the Division Bench as well as the Apex Court was regarding payment of Central Dearness Relief to the petitioners. The respondents have initially granted CDR to the petitioners. Audit objection was raised that they are only entitled for IDR, hence direction was issued to withdraw the excess payment and consequently orders were issued. However, after the judgments of this Court

as well as the Apex Court holding that those Food Corporation employees who had opted for retiral benefits of Central Government are entitled for CDR, the said CDR was extended by order dated 24.9.2010 issued by the Government and all consequent actions had been taken for adding the CDR from the date of retirement of the petitioner. It is submitted that that no other issue has been decided by this Court or Apex Court apart from the entitlement of CDR to the petitioner. The Apex Court set aside the orders directing recovery of pension on the ground of violation of principles of natural justice. The petitioners who had given option for pay scale of Corporation and retiral benefits of those of Central Government were entitled to be extended the retiral benefits as admissible to Central Government employees on the basis of last drawn pay in the pay scale applicable to them in the Corporation.

15. It is further contended that the learned Single Judge committed error in holding that Exts. P9 and P10 are not in accordance with the judgments of the learned Single Judge, Division Bench and the Apex Court. The learned Single Judge erroneously held that petitioners are entitled to be treated as CDA pensioner which according to the learned Single Judge has been finalized by the judgments of the learned Single, Division Bench and the Apex Court. It is also submitted that petitioner had opted for IDA pay scale and at the time of retirement, he was receiving IDA pay scale and his benefit of retirement has to be calculated on the last drawn pay in the IDA pay scale in accordance with the retiral benefits admissible to Central Government employees. All benefits available to the Central Government employees are being extended to the petitioners and there was no ground to set aside Exts. P9 and P10. It is further submitted that the petitioners had taken the benefit of IDA pay scale as revised from time to time, which revision was effected in each five years and they are not entitled for Central Pay Revision. It is further submitted that the petitioners are claiming the benefit of CDA pay scale and Central Pay Revision which is not admissible to them. Sri N. Nagaresh further submitted that the order of the Apex Court was duly implemented by the Central Government on 24.9.2010 and the petitioner and applicant had already been paid CDR and there is no willful disobedience of any order or judgment of this Court. It is also submitted that the contempt petition deserves to be dismissed.

16. Sri N.N. Sugunapalan, the learned Senior Counsel appearing for the petitioner supported the judgment of the learned Single Judge. He contends that the judgment of the learned Single Judge dated 14.3.2000 and the judgment of the Division Bench dated 1.10.2002 have clearly held that the writ petitioners are entitled for all benefits admissible to the Central Government employees and they are entitled to be treated as CDA pensioner. The respondents have committed error in treating the petitioner as IDA pensioner. Whereas, as per option given under Section 12A(4)(b), petitioners have to be treated as CDA pensioner for the purposes of calculating pensionary benefits. It is contended that since the petitioners have to be treated as CDA pensioner, they are also entitled for all the benefits of Central Pay Revision in the CDA pay scale apart

from receiving the CDR. It is further contended that the arguments raised by the learned counsel for the appellants in the writ appeal are the same which were raised before the learned Single Judge in O.P. No. 1642/1996 as well as in O.P. No. 21954/1999 which were not accepted by this Court as well as by the Supreme Court. Hence, the appellants cannot raise the same arguments again.

17. It is further contended that the effect of Exts. P9 and P10 orders are that the petitioners' pension would be reduced from one which they are getting, prior to the issue of orders Exts. P9 and P10. Learned Senior Counsel Sri N.N. Sugunapalan further contended that treating the petitioner and the applicant as IDA pensioner is nothing, but contempt of Court and in spite of judgments of this Court and Supreme Court, their pension have been revised treating them as IDA pensioner which is nothing, but clear contempt of the judgment of this Court dated 14.3.2000 as confirmed by the judgment of the Division Bench dated 1.10.2002 and the Apex Court.

18. We have considered the submissions of learned counsel for the parties and have perused the records.

19. From the submissions made by the learned counsel for the parties in the writ appeal, following are the issues which arise for consideration in the writ appeal:

(a) What is the consequence and effect of inter parte judgment in O.P. No. 21954/1999 dated 1.10.2002 with regard to computation of retiral benefits of the petitioner,

(b) Whether for computation of retiral benefits, the petitioner has to be treated as IDA pensioner or CD A pensioner and further, the computation of benefits of the petitioner has to be on the basis of pay scale drawn by him in the Corporation i.e., IDA pay scale, or is entitled to be reckoned as CDA pay scale i.e. which was applicable to the Central Government employees holding the same post.

(c) Whether the transferee who has exercised his option under Section 12A(4)(b) is entitled to compute his pension, retirement benefits, on the basis of CDA pay scale i.e. Central pay scale, as applicable to the employees holding the same post in the Central Government.

20. All the issues being inter connected are taken together.

21. There is no dispute between the parties that the petitioner was employed in Government of India, who was transferred to the FCI, where the petitioner exercised his option dated 18.4.1977 opting for Corporation pay scale and for retirement benefits opting for Central retiral benefits. Copy of the option letter of the petitioner filed along with the counter affidavit [Ext. R1(b)] where under subsection (4)(a) and (4)(B), the option exercised is as follows:

(a) "by the scale of pay applicable to the post held by me under the Government immediately before the date of transfer.

OR

by the scale of pay applicable to the post under the Corporation to which I am transferred,

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time.

OR

the leave, provident fund or other terminal benefits admissible to the employee of the Corporation under the Regulations made by the Corporation under the Food Corporation Act.

This option is final."

22. In the Food Corporations Act, 1964, Section 12A was inserted by Food Corporation Amendment Act, 1968. Section 12A sub-section (4) which is relevant for the present case is quoted below:

"(4) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed.

(a) by the scale if any applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred.

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the corporation under the regulations made by the Corporation under this Act, and such option once exercised shall be final.

Provided that the option exercised under clause (a) shall be applicable only in respect of the post to which such officer or employee is transferred to the Corporation and on appointment to a higher post under the Corporation, he shall be eligible only for the scale of pay applicable to such higher post.

Provided further that if immediately before the date of his transfer any such officer or employee is officiating in a higher post under the Government either in a leave vacancy or in any other vacancy of a specified duration, his pay, on transfer, shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

Provided also that when an officer or other employee serving in the Department of the Ministry of the Central Government dealing with food or in any of its

attached or subordinate officers is promoted to officiate in a higher post in the Department or office subsequent to the transfer to the Corporation of any other officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt."

23. According to the option exercised by the petitioner, he opted for pay scale of the Corporation under sub-clause (a) of subsection (4) and opted for leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the Rules and orders of the Central Government as amended from time to time under clause (b) of subsection (4). Sub-section (4-C), which is also relevant for the present case, is quoted below:

"(4-C) Where an officer or other employee has exercised an option under sub-section (4) or exercises, or is deemed to have exercised an option under that sub-section, read with sub-section (4-A) or sub-section (4-B) to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation."

24. Sub-section (4-C) provides that, where an officer or employee has exercised an option under sub-section (4) to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation.

25. A conjoint reading of Section 12A(4)(b) and (4-C) provides the following consequences when a transferee opt for leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government:--

(i) The leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government shall be applicable to the transferee in accordance with the rules and orders of the Central Government as amended from time to time,

(ii) The leave, provident fund, retirement or other terminal benefits of the transferee shall be the same as admissible to the employees of the Central Government.

(iii) The leave, provident fund, retirement or other terminal benefits of the transferee shall be calculated on the basis of the pay and allowance last drawn by him in the Corporation.

26. From the statutory scheme, it is clear that all though transferee opting for Central Government retiral benefits shall be entitled for retirement benefits of Central Government as admissible to the employees of the Central Government

in accordance with rules and orders applicable to the Central Government employees, such computation shall be on the basis of pay and allowances drawn by the transferee in the Corporation. Thus, the basis of computation is the last pay drawn in the Corporation by the employee. The pay band which was applicable to a transferee at the time of his retirement are thus, foundation of computation for his benefits.

27. There is sufficient materials on the record to prove that in the Corporation, IDA pay scale was introduced and the petitioner had opted to the said IDA pay scale w.e.f. 1.8.1983. Prior to the introduction of IDA pay scale for the employees of FCA, the employees of the FCI were receiving salary in the CDA pattern. In the counter affidavit filed in the writ petition, paragraph (19) r/w. Ext. R1(1), it has been pleaded that had the petitioner not opted for IDA pay scale on the date of his retirement, his last drawn pay would have been only Rs. 2,540/-, whereas he having opted for IDA, then his last drawn pay was Rs. 5,440/-. Ext. R1(1) gives a comparative table of CDA pattern pay scale and IDA pattern pay scale. It is useful to note the CDA pattern pay and IDA pattern pay w.e.f. 1.8.1983 till his date of retirement which is extracted below:

28. The IDA pay scale and receiving the said benefit by the petitioner is reflected from the materials brought on record. It is also relevant to notice that IDA pay revision was effected w.e.f. 1.8.1983, 1.8.1987 and 1.2.1992 i.e. normally after 5 years, whereas central pay revision is effected normally after 10 years. The petitioner having not opted for Central pay scale while exercising his option under Section 12A(4)(a) rather he opted for Corporation pay scale i.e. his last drawn salary was in IDA pay scale. IDA pay scale, which was last drawn salary of the petitioner is the basis of computation of retirement benefits which is extended to him akin to Central Government employees. Whether the petitioner is treated as IDA retiree or CDA retiree is not the real issue and the real issue is as to in which pay scale, the petitioner has drawn his last salary which is to form the basis of computation of retiral benefits which is admissible to persons similar to those of Central Government employees.

29. There cannot be any denial of the fact that petitioner had last drawn IDA pay scale. Hence IDA pay scale which was drawn by him and subsequent revision in the said pay scale for liberalized pensionary benefits have to be computed for extending the retiral benefits admissible to him. There is also no denial of the fact that for computation of retiral benefits, Central Civil Services (Pension) Rules, 1972 and the orders issued by the Central Government for computing the benefits and other benefits have to be applied to the petitioner. The contention raised by Sri N.N. Sugunapalan that the petitioner having opted for Central Government retiral benefits, the pay scale which is applicable to the Central Government employees and the benefit of 4, 5 and 6 Central Pay Revision is also to be extended to the petitioner, is wholly misconceived. The petitioner having not opted for Central Government pay scale under Section 12A(4)(a), subsequent revision of Central Government pay scale was not available to the

petitioner for computation of his retiral benefits and as per Section 12A(4-C), such benefit is required to be calculated on the basis of pay and allowance drawn by him in the Corporation.

30. The use of the words "such benefits shall be calculated on the basis of pay and allowances drawn by him in the Corporation" are of significance and all calculations of pensionary benefits, revisions of pension and the benefit of any liberalized formula have to rest on the pay and allowances drawn by him in the Corporation. Thus, the submission of Sri N.N. Sugunapalan and the claim of getting the benefit of 4th, 5th and 6th Central Pay Revision are wholly misconceived. The Central Pay Revision is applicable with regard to the persons drawing Central Government pay scale. To be governed by leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government has to be read to confine to the nature/number and the manner of computation for such retiral benefits. The statutory intendment is that whatever benefits available to the Central Government employees shall also be extended to the transferee if they exercise option to be governed by leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government. However, while computing such benefits, the pay scale actually drawn by such transferee has to be reckoned with, including revision of such pay for the purposes of pensionary benefits from time to time. Only the manner of calculation of such benefits has to be in accordance with the CCS(P) Rules, 1972 and the orders issued by the Central Government from time to time.

31. In so far as the earlier litigation culminating in the judgments dated 14.3.2000 and 1.10.2002 is concerned, the petitioner and other employees, including the applicant, were extended the benefit of Central Government Dearness Relief which was sought to be recovered on the basis of an audit objection. At that juncture, O.P. No. 1642/1996 was filed. Ultimately, it was held in the said judgment that petitioners are also entitled for CDR which is admissible to Central Government employees and they cannot be deprived of the said benefit. In O.P. No. 1642/1996, the earlier orders issued by the Government of India dated 8.2.1996 were challenged which have been brought on record as Annexures-A & B to the contempt petition. Paragraph (2) of the Annexure-B order refers to the dearness relief on pension/family pension which is to the following effect:

"2. Dearness relief on pension/family pension.

Pensioners/family pensioners governed by those instructions/orders shall not be entitled to any dearness relief on pension/family pension in terms of the orders/instructions issued by the Deptt. of Pension and Pensioners" Welfare for the Central Government Employees or CDA pattern employees of the public sector undertakings from time to time. In their case, the amount of dearness relief on pension/family pension shall be regulated/payable in terms of the instructions/orders to be issued separately by the Department of public Enterprises from time to time. If any amount of dearness relief has already been paid, otherwise than

in accordance with these orders/instructions, the same shall be adjustable against the amount due/payable under the orders to be passed by the Deptt. of Public Enterprises separately."

32. Now we revert back to the judgment of this Court dated 14.3.2000 in O.P. No. 1642/1996 and other cases. The facts of the said original petition are detailed in paragraph (5) of its judgment which is as under:--

"5. O.P. No. 1642 of 1996: There are five petitioners in this O.P. All of them were employees of the Food Department. Their services were transferred to the Food Corporation. The first petitioner was promoted as Assistant Grade-2 with effect from 11.11.1970. He was promoted as Assistant Grade-I and he was placed in the selection grade with effect from 1.12.1987. Thereafter, he was promoted as Assistant Manager under Ext. P2. While so, he retired from service. The second petitioner, who was appointed as tally clerk retired from service as Selection Grade Assistant Grade-I on 30.4.1991. The third petitioner who joined service as Weighment Clerk in the Department of Food was transferred to the Food Corporation and got promotion as Assistant Grade-2, then as Assistant Grade-I and retired from service as assistant Grade-ID. in Selection Grade on 30.1.1993. The fourth petitioner was appointed as Watchman, he was promoted as dusting operator and later as picker. He retired from service as Selection Grade Picker with effect from 31.3.1993. The fifth petitioner was appointed as tally clerk in the Central Storage Depot under the Food Department. He was promoted as Assistant Grade-2 on 1.12.1969 and as Assistant Grade-1 from 2.1.1973. He got selection grade of Assistant Grade-1 from 1.12.1987 and later promoted as Assistant Manager (Depot) on 2.12.1973. He retired from service as Assistant Manager on 30.11.1993. For the petitioners, their pension was calculated not on the basis of the central government employees pension rules. They filed the above O.P. for a writ of mandamus directing the respondents to grant pension and other terminal benefits in parity with other central government employees and disburse the arrears with 18 per cent interest and to quash Exts. P15, and P16, and also for a further mandamus commanding the first respondent to suitably amend para 2 of Exts. P15 and P16 declaring that the petitioners are entitled to dearness relief on pension at the rates applicable to central government employees in terms of the instructions issued from time to time by the Department of Pension and Pensioners' Welfare for the central government employee from the respective dates of their retirement."

33. After noticing the facts of the case, the learned Single Judge has noticed the submission made by learned counsel for the Union of India that there is a memorandum of settlement between the employees of the Food Corporation and the Manager. As per the memorandum of settlement the petitioners' pension and other terminal benefits are to be calculated based on IDA applicable to the employees of the Corporation. It is also contended that option as per decision under CCS(P) Rules does not include Central Dearness Allowance on pension. The submission of Union of India was noted in paragraph (7), the relevant portion of

which is quoted below:

"The learned counsel for the respondents submitted that as per the memorandum of settlement between the employees of the Food Corporation and the management, the petitioners' pension and other terminal benefits are to be calculated based on industrial dearness allowance applicable to the employees of the Corporation and not on the basis of central dearness allowances. It is also submitted that pension as per the definition under the CCS (P) Rules, 1972 does not include dearness relief on pension. As per the memorandum of settlement the employees of the Corporation accepted scales of pay on IDA pattern when the scales of pay applicable to the central government employees is CDA pattern. Clause 7 of the memorandum relates to terminal benefits of the employees of the FCI. The Government of India issued orders regulating pension of the employees who retired from the FCI from 1.8.1983 till 31.7.1987. It is submitted that the concept of IDA also known as variable dearness allowance was made applicable to the employees of the FCI and hence the petitioners cannot claim their pension and other terminal benefits fixed based on CDA, as they ceased to be members of the Food Department."

34. The learned Single Judge after considering the submission rejected the submission of the learned counsel for Union of India and held that Union of India was estopped from contending that petitioners who were not parties to the settlement are entitled to only IDA pattern of Dearness Allowance. It was also held that in view of the option exercised by the petitioner under Section 12A(4), the respondents have no right to change or reduce the dearness allowance or terminal benefits. In paragraph (9), the following was held:

"9. Section 12A(4) of the Act provides that the employees are entitled to terminal benefits in accordance with the rules and orders of the central government from time to time, as per the option exercised by them. Admittedly, there is no amendment to the Act or the Rules. Therefore, the respondents are bound by the provisions of section 12A(4)(b). Section 12A(4-C) of the Act provides, that "where an officer or other employee has exercised an option under sub-section (4), or exercises, or is deemed to have exercised, an option under the sub-section, read with sub-section (4-A), to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation." Accordingly, pay and allowances were calculated based on the last pay drawn and their terminal benefits were fixed and disbursed to them. Therefore, the respondents are estopped from contending that the petitioners, who were not parties to the settlement, are entitled to only VDA pattern of DA. Learned counsel for the respondents submitted that the petitioners mentioned above, excepting the petitioners in two cases, O.P. Nos. 1642 & 1710 of 1996, have received the arrears calculated on the basis of VDA pattern and as the petitioners have received the said amount, they are estopped from contending that they are

entitled for terminal benefits as per CDA. As the amount was wrongly disbursed to the petitioners, they have received the same. That does not mean that they are bound by the decision of the central government to calculate terminal benefits accepting the IDA pattern of scales of pay. In the absence of any amendments to section 12A(4) of the Food Corporations Act, the petitioners are entitled to get their terminal benefits fixed as per the provisions of Section 12A(4). The respondents have no right to change or reduce the DA or terminal benefits. Therefore, the petitioners are entitled to get the Original Petitions allowed."

35. While allowing the original petition, the following was directed by the learned Single Judge:

"O.P. No. 1642 of 1996 is allowed, directing the respondents to grant them pension and other terminal benefits in parity with the central government employees with 12% interest per annum from the dates of respective retirement. A writ of certiorari is issued quashing paragraph 2 of Exts. P15 and P16 and the first respondent is directed to amend paragraph 2 of Exts. P15 and P16, declaring that the petitioners are entitled to dearness relief on pension at the rates applicable to central government employees in terms of the instructions issued from time to time by the Department of Pension and Pensioners' Welfare for the central government employees from the respective dates of their retirement with 12% interest."

36. The above judgment of the learned Single Judge makes it clear that the original petition was allowed holding that respondents are estopped from contending that in view of the settlement, the petitioners are entitled for Industrial Dearness Relief on IDA pattern. Rather it was held that they having been exercised option, CDR is entitled to be received by them. No other issue was touched or decided by the learned Single Judge. Further, it is relevant to note that in the operative portion, only paragraph (2) of order dated 8.2.1996 issued by Government of India (as quoted in paragraph (32) above) was quashed. Paragraph (2) directed that petitioners shall not be entitled to Dearness Relief on the pattern of Central Government employees, which after being quashed, direction was issued to amend the same, to extent the Dearness Relief as admissible to the Central Government employees.

37. The Division Bench in its judgment dated 1.10.2002, which was a common judgment in the writ appeal filed against the judgment of the learned Single Judge as well as O.P. No. 21954/1999, after referring to Section 12A(4), it was held as under:

"Admittedly the petitioners thereon opted to Central Government scheme and they had retired without receiving benefits as per Central Government pattern. The appellants herein contend that they will not get dearness reliefs as applicable to Central Government employees as at the time of retirement they were employees of Food Corporation of India. But as per Section 12A(4) in view of

their option petitioners are entitled to get their terminal benefits admissible to Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They were given to right for option under clause 12A(4)(a) and (b) and they opted the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees. Therefore, there are no reasons for discriminating them. The petitioners also will be entitled to get the benefits as they are treated as Central Government employees in view of the option exercised by them. We fully agree with the decision of the Karnataka High Court and learned Single Judge. In view of the above decision there is no merit in the writ appeals and are dismissed.

Accordingly the writ appeals are dismissed and the original petitions are allowed."

38. The Division Bench also held that the petitioners having opted for pattern of Central Government for retiral benefits, they are entitled to receive all the benefits of the Central Government employees. The matter was taken to the Apex Court where the Apex Court considered the submission on the basis of settlement raised by the Union of India and rejected the same holding that the settlement was not applicable to the petitioners. The Apex Court held that the reduction of pension having been ordered in violation of natural justice, the same is liable to be declared as void. In paragraph (11), following was stated:

"We have considered the respective submissions and carefully scrutinized the records. Although, neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justices, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action oriented notice and opportunity of hearing. By virtue of the option exercised by them under Section 12A(4)(b) and consequential action taken by the competent authority to fix their pension etc., the private respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unearned. The rule of audi alteram partem has been treated as fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void - *State of Orissa vs. Dr (Miss) Binapadi Dei and others* , AIR 1967 SC 1269 and *Sayeedur Rehman vs. State of Bihar and others* , (1973) 3 SCC 333."

39. The Apex Court further held that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error in setting aside the said exercise. The Apex Court further held in paragraph (17) that the right acquired by the respondents as a sequel to exercise of option in terms of Section 12A(4)(b) cannot be taken away by any bipartite settlement. Following was stated in paragraph (17):

"17. Even if the memorandum of settlement is held applicable to other employees of the corporation, the same cannot adversely affect the option exercised by the private respondents in terms of Section 12A(4)(a) and (b) read with Section 12A (4C) of the Act. It has neither been suggested on behalf of the appellants nor it can be laid down as a proposition of law that the bipartite settlement arrived at between the Unions of the employees and the Management of the Corporation could take away the right acquired by the respondents as a sequel to exercise of option in terms of Section 12A(4)(b)."

40. From the above judgment also, it is clear that the Apex Court upheld the order of the learned Single Judge on the ground that it adversely affected the petitioners, without giving opportunity to them and further the statutory option exercised under Section 12A(4)(b), cannot be diluted by any bipartite settlement. The judgments of this Court and the Apex Court are to the effect that the petitioners are entitled to all retiral benefits admissible to the Central Government employees, including the Central Dearness Relief (CDR).

41. Dearness Relief has been defined under Rule 3(1)(cc) read with Rule 55A of the CCS(P) Rules. Rule 55A was inserted by Government of India by notification dated 22.1.1991 which was the relief granted on pension against price rise, at such rates and subject to such conditions as the Central Government may specify from time to time. Rule 55A is extracted below:

"55-A. Dearness Relief on Pension/Family Pension.

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such corporation/Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment."

42. Thus, the petitioners were entitled to CDR and all other retiral benefits admissible to Central Government. They being exercised their option under Section 12A(4)(b) as observed above, all such benefits have to be computed on the basis of the salary drawn by them in the Corporation.

43. Now, we come to Exts. P9 and P10, which were challenged in the writ petition. Ext. P10 is the order issued by the Government of India, Ministry of Food and Public Distribution, Pay and Accounts Office dated 18.5.2011 where instructions were issued to grant Central Dearness Relief from 1.2.1993 onwards and Central Dearness Relief @ 61%, 64%, 67% and 71% should be paid on the basic pension from 1.1.2004. It is true that the letter states the petitioner as IDA pensioner by stating "IDA Revision with CDR as per Supreme Court's order".

44. As observed above, the petitioner having received the IDA pay scale, which

was the last pay drawn at the time of his retirement in the Corporation, which pay scale is the basis for computation of all the benefits, the petitioner cannot be heard in saying that computation of retirement benefits should be made on the basis of corresponding pay scale of Central Government as admissible to employees who had drawn their last salary in the Central Government pay scale. Such interpretation is wholly misconceived and runs counter to the statutory scheme indicated in Section 12A(4-C), as discussed above.

45. The instructions given under Ext. P10, after directing for revision of the petitioners, are as follows:

Instructions

"1. As per Supreme Court judgment Central DR has to be paid on pension and family pension. IDA DR already paid on SP/FP is to be adjusted against the Central DR to be paid from 01.02.1993 onwards to current date. Since 50% merger on pension as on 01.04.2004 is NOT applicable, Central DR @ 61%, 64%, 67% and 71% should be paid on basic pension from 01.01.2004 till 31.12.2005 respectively.

2. VI PCR benefits should not be allowed except Central DR.

3. There is No change in Commutation/DCRG due to this Updation."

46. The instructions further mention that 6th Central Pay Revision shall not be applicable to the petitioner except Central Dearness Relief. No exception can be taken to the said direction. Since as explained above, the petitioner is entitled for the benefit of revision under IDA pay scale which revision was made, if any, on the last drawn pay of the petitioner. The pay scale drawn by the Central Government employees were not relevant for the petitioner for computation of retiral benefits. We, thus, do not find any error in Exts. P9 and P10, and interference by the learned Single Judge was unwarranted. However, there cannot be any dispute that petitioner was entitled to receive all retiral benefits admissible to Central Government employees in accordance with the CCS(P) Rules and the orders issued by the Central Government from time to time.

47. In the result, the judgment of the learned Single Judge deserves to be modified in the following manner:

a) The direction of the learned Single Judge, in so far as it set aside Exts. P9 and P10, is set aside.

b) The retiral benefits of the petitioner shall be computed as admissible to Central Government employees in accordance with the Central Civil Services (Pension) Rules, 1972 and the orders issued by the Central Government from time to time. The calculation of the retiral benefits of the petitioner shall be made on the basis of his last drawn pay in the Corporation i.e. IDA pay scale.

c) The writ petitioner shall be entitled for Central Dearness Relief and all other benefits as admissible to Central Government employees.

d) The petitioner is given an opportunity to represent against computation of pension in consequence to Exts. P9 and P10 raising objections which shall be considered and a decision be taken and communicated by the first respondent expeditiously, preferably within two months from the date, the representation is received.

48. Now we come to the Cont. Case No. 1536/2010. The contempt petition was filed on the basis of judgment dated 14.3.2000 in O.P. No. 1642/1996. The basis of the contempt was issuance of order dated 24.9.2010 by Government of India (Annexure-F) wherein the Government of India directed the Chief Controller of Accounts to switch over from IDA Dearness Relief to CDA Dearness Relief and to release the due amounts payable to the seven respondents and other similarly situated persons who retired on IDA pay scales. The order of the Government is issued in compliance of the Supreme Court order dated 10.2.2010 and the direction is as follows:

"In compliance with the aforesaid judgment of the Hon"ble High Court of Kerala and Supreme Court of India, it has be decided to switch over from IDA Dearness Relief to CDA Dearness Relief and to release the due amounts payable to the seven respondents and other similarly situated persons (Food transferees) of FCI who were retired on IDA pay scales, in consultation with the Department of P & PW and Ministry of Law and Justice. Dearness Relief for retired CDA pattern employees are paid on half yearly basis, as per the orders issued Department of P & PW for pensioners.

All other term and conditions contained in the order issued by this Department vide letter No. A-38020/1/93-FC.3 dated 8.2.1996 will remain unchanged."

49. We do not see how the order dated 24.9.2010 can be said to be contemptuous. The order purports to comply with the directions of the Apex Court and the judgments of this Court dated 14.3.2000 and 1.10.2002. The entire history of the litigation is traced in the letter dated 24.9.2010 wherein a direction was issued to give CDR.

50. We have already noticed that the main contention raised by the Union of India before this Court as well as the Apex Court was that the petitioners, who had exercised option for Central Government retiral benefits, are entitled to Industrial Dearness Relief and not Central Dearness Relief, which argument was rejected and it was held that the petitioners are entitled for CDR which is applicable to the Central Government employees. The order dated 24.9.2010 cannot be said to have committed willful contempt. It is true that in the contempt application, the applicant has stated that inspite of orders passed by the Court, the applicant is not receiving any benefits and the respondents are keeping in abeyance the judgment and other directions in that regard. Such allegations are replied in the affidavit filed by the 4th respondent wherein the orders issued on 20.12.2010 and consequential orders were brought on record as Annexures-R1 to R4 which indicate that as per the judgment of this Court and

the Apex Court, the pension was revised. Thus, the benefits flowing from the judgments of this Court and the Apex Court were extended to the petitioner and even if at the time of contempt, the pension was not revised, it was soon revised and no willful disobedience can be imputed on the respondents.

51. We are of the view that no case of contempt has been made out. Therefore, the Cont. Case (C) is dropped.

The writ appeal and the contempt case are decided as above. The parties shall bear their own costs.